



Prepare and Present a Strong Case for UI – When every bit counts, make the most of an Unemployment Hearing ...

As a small business owner, you have probably come across a situation where you felt forced to pay unemployment insurance for a least deserving individual. Thinking you have no real recourse, you not only pay the benefit but later pay increases in your unemployment insurance premiums.

It doesn't have to be that way. As an employer, you have the right to contest a claim by requesting a hearing whenever you disagree with a determination of benefits to a former employee under the Unemployment Insurance Law. According to the US Department of Labor (DOL) UI benefits, created at the height of the Great Depression in the 1930s, is intended to temporarily help workers who have lost their jobs through no fault of their own. However, many individuals try and collect benefits even when they are at fault. But the only way their benefits can be denied is if you, the employer, contest it.

Employers may think that it is pointless for a hearing since the decision is already made. However, when there are legitimate grounds the employee may be denied the UI benefits. So, when you receive a UI benefits determination on a former employee that is unwarranted, you should immediately request a hearing. For some states, such as New York, you may have to make the request in writing. I have known companies to pay a third-party to go to the hearing but I have rarely seen those cases turning out favorably for the employer simply because the third-party is providing hearsay testimony which has less credence than if first-hand witnesses are present.

Once you have been granted the hearing, there are some basic things you can do to ensure the hearing goes favorably for your company.

Preparation

Identify the specifics about the Hearing: Review the hearing notice and read it thoroughly. The notice includes important information such as date, time and place and what is required from you that can help you in your appeal. Also, make sure to track all the hearing notices you receive since they may have other pertinent information, including date changes or separate issues being heard on separate dates or on the very same date.

If key individuals are unable to attend the hearing, you may request an adjournment in writing and include the specific reason for requesting it. You may also be able to request a phone hearing. In New York State, if the administrative law judge does not grant your request for adjournment and issues an unfavorable decision, you may apply for a reopening.

Make sure to send in all requested exhibits and paperwork before the hearing. In New York State, you may be able to familiarize yourself with the other party's position by requesting a review of the hearing file just prior to the hearing itself.

Prepare your Witness and Documentation Diligently: It is essential that you have all the pertinent information about the employee, such as start date, salary, date of termination,

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reason for termination, etc. Make sure prepare your witnesses and if a witness cannot attend have them provide a sworn written testimony. Remember, first-hand testimony is always better than third party hearsay. This is important because the Appeal Board and the courts have consistently held that a claimant's sworn testimony must prevail over an employer's hearsay evidence. Also, make sure you do not take any unnecessary information with you, only the information which is relevant and concise.

Basic Understanding of Local Laws: It is helpful to familiarize yourself with the laws of your state. Detailed information on hearing procedures can be found at many local Department of Labor websites. New York State DOL had detailed descriptions for employers on how to navigate a hearing.

The Hearing

The UI hearing is a formal administrative hearing in front of an impartial administrative judge (examiner) and you need to treat the hearing accordingly. That individual is going to make a decision on your case and so, you need to show the proper respect. The judge/examiner will ask you questions to help them determine the case.

Witness and Documentation: Make sure all relevant documents are concise and chronologically laid out and entered into record. Prep your witnesses to provide chronological testimony to avoid confusion. It is a good idea to bring sets of copies of all documents.

- **For example:** If the individual was terminated for a policy violation, then make sure that the person who witnessed or has first-hand knowledge of the violation is there and also that documentation such as a copy of the specific policy and the employee's acknowledgement of receipt is available for the record.

Cross-examination: You will have the opportunity to cross-examine your witness. Use this time specifically to question the former employee and get clarification on any point you are trying to make. Remember, claimants will stretch the truth. Still, it is not a good idea to use this time to try and undermine their testimony or "trip" them up.

Closing Statement: Should be a brief statement summarizing your appeal as to whether you are requesting the former employee is denied benefits.

Remember, this UI hearing is all about fact-finding and should be precisely used for that purpose. You need to be able to provide all the necessary facts through documentation and witness testimony to help the judge/examiner determine if your request for denial of benefits is valid. As I tell clients for any employment related issues, if you have proper documentation which can be presented in a clear and concise format, you have a much better chance of having a decision in your favor.

If you receive an unfavorable decision many states allow for an appeal to a board of review. In New York State, you can file an appeal with the Unemployment Insurance Appeal Board. Decisions of the Appeal Board can be appealed to the Appellate Division of the Supreme Court, Third Judicial Department, and from there to the New York State Court of Appeals.